Principal and Agent — Rights of Principal — Duties of Agent.—In *Eunean* v. *Rieger et al.*, 16 S. W. Rep. 854 (Mo.), the court sets out at length the strictness to which an agent is held in dealings with his principal. Eunean, who lived in the Indian Territory, owned a house in Kansas City which had been condemned as unsafe. After an inspection of the house, he authorized Rieger, his agent, to sell it and the lot for $4,500.00. Rieger sold the property to Mills, an impecunious acquaintance, agreeing to save him harmless and take the property himself if Mills could not pay for it. Of the transaction with Mills, Rieger fully informed Eunean, who was satisfied therewith. Afterwards Mills conveyed the property to Rieger's brother who in turn conveyed it to Rieger himself. Of this last conveyance Rieger did not tell Eunean till about a month before this suit was brought. The property was worth $12,000.00. The court ordered a re-conveyance to Eunean. In the decision Thomas, J., says: "He [Rieger] was the plaintiff's agent in respect of this property, and it was his duty as such to get as much for it as possible; the law will not permit him to reap an advantage he has acquired by reason of his confidential relation. Nor does it make any difference that plaintiff may have known that defendant was to become the owner of the property in a certain contingency, and that he did in fact become the owner of it. The only question a Court of Equity will ask, in the investigation of transactions between parties sustaining a confidential relation to each other, is whether an advantage has been obtained by virtue of that relation. * * * The fairness or unfairness of the transaction will not be considered in such case. An agent cannot serve two masters. If he undertakes to act for himself and at the same time for his principal, and reaps an advantage by his double dealing, the law will take it from him, unless the principal, knowing all the facts, has allowed the agent to so change his condition that he cannot be put in *statu quo*, and thus make it inequitable to rescind the contract." Citing *Michaud* v. *Girod*, 4 How. 503; Story on Agency, § 210.

Electric Street Railways—Rights of Telephone Companies in Streets.—The Supreme Court of Ohio in a recent case (*Cincinnati Inc. Plane R'y. Co.* v. *City and Sub. Telegraph Ass'n*, 48 Ohio St., 27 N. E. Rep. 890) has considered the question as to the respective rights of electric railroad and telephone companies when operating lines in the same street. The telephone company attempted to enjoin the railroad from employing the ground circuit for the return current of electricity, claiming such use seriously interfered

with the working of their wires in that vicinity. The Supreme Court refused the injunction, holding that no exclusive rights to the use of the ground circuit existed in the association, it being an elementary principle of science discovered forty years prior to the invention of the telephone. Neither was there any vested interest in the association by virtue of prior use and operation in the street. "The primary and dominant purpose for which streets were established was to facilitate travel and transportation; they belong from side to side and end to end to the public, for public use. The telephone poles, wires and appliances are not among the original and primary objects for which streets were opened. As a general rule, an occupation of the streets, otherwise than for purposes of travel and transportation, is presumptively inferior and subservient to the dominant easement of the public for highway purposes; and the fact that permission is given to occupy the streets for other purposes does not confer a prior and paramount right to occupy them, to the exclusion of their use for travel in a mode different from what obtained when such permission was given. As against the railroad company, the telephone company has no vested interest and exclusive rights in and to the use of the ground circuit in the streets as a part of the telephone system."

An opposite view has been taken in the lower courts of New York in *Hud. Riv. Tel. Co.* v. *Watervliet Turnpike and R. R. Co.*, decided Sept. 10th, and the decision in the Court of Appeals will be awaited with interest.

Contributory Negligence — Proximate Cause — Smithwick v. *Hall & Upson Co.*, 59 *Conn.* 261.—The plaintiff, employed in storing an ice house, was warned to keep away from a certain part of the platform which had no railing and was slippery. Plaintiff disobeyed, and the wall falling, he was knocked to the ground and injured. Upon these facts the defendant contended that the plaintiff was guilty of such contributory negligence as to bar his right to recover more than nominal damages. But as his injury was not the result of the manifest perils, but was caused through the negligence of the defendant, by the falling walls, from which source he had no reason to anticipate the slightest danger, he could be guilty of no negligence with respect to the latter by changing his position contrary to orders, for negligence presupposes a duty of taking care, and this in turn presupposes knowledge or its legal equivalent. The defendant seems to claim, however, that although some of the plaintiff's injuries were caused by falling bricks, yet most of them were caused by his fall, and as he prob-